

REMARKS

Claims 1-21 and 23-39 are currently pending. Claims 12-21 and 33-37 have been withdrawn from consideration. Claims 1, 23 and 39 have been amended. These amendments are supported by the specification at page 1, paragraph 1 and page 2, paragraph 19. It is respectfully submitted that no new matter is introduced by the foregoing amendments and no new issue that would require further consideration and/or search by the Examiner is raised by the foregoing amendments. Specifically, the amendments simply rephrase or rearrange claim limitations. Therefore, it is respectfully submitted that entry of these amendments is proper after final rejection, and entry thereof is respectfully requested.

As an initial matter, Applicants request clarification as to why the cover sheet of the office action indicated that claim 38 has been withdrawn from consideration. Claim 38 is readable on elected Species 1.

Rejection under 35 U.S.C. § 101

Claims 1-11, 23-32, 38 and 39 stand rejected under 35 U.S.C. § 101 as allegedly including non-statutory subject matter. Independent claims 1 and 23 and dependent claim 39 have been amended to clarify that the joint prosthesis system does not cover a human being or portion thereof. Specifically, claims 1, 23 and 39 recite autogenous tissue, which is tissue that has been manipulated. Thus, claims 1, 23 and 39 and claims 2-11 and 24-32, which depend directly or indirectly from claims 1 or 23, do not include non-statutory subject matter.

Rejections under 35 U.S.C. § 102

Claims 1-11, 23-32 and 38-39 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,562,073 ("Foley") for the reasons set forth on page 3 of the office action. Applicants submit that Foley does not teach or

suggest a bioabsorbable spacer and at least one connector comprising autogenous soft or fibrous tissue and thus does not anticipate the present claims.

First, Foley does not teach or suggest a bioabsorbable spacer. Foley describes a rigid body portion made of bone as a spacer between vertebrae to promote spinal fusion. Foley does not indicate that the bone spacer is bioabsorbable, as required by the present claims. Applicants note that this deficiency is not overcome even if the rigid body portion is filled with a bone growth promoting material because the filler material is not a spacer, since the filler does not function to space the vertebrae at particular positions. Vertebrae are held in their positions by the rigid body portion with or without the filler material. *See* Col. 4., ll. 32-35 (“Rigid body portion 12 has sufficient rigidity and structural integrity to substantially maintain height H and to withstand normal forces applied to the spinal column.”). As such, Foley does not teach a bioabsorbable spacer, as recited by the present claims.

Second, Foley does not teach or suggest at least one connector comprising autogenous soft or fibrous tissue. Instead, Foley’s connectors comprise at least partially demineralized bone.

For at least these reasons, Applicants submit that claims 1 and 23 and claims 2-11, 24-32 and 39, which depend directly or indirectly from claims 1 or 23, are not anticipated by Foley. Accordingly, Applicants respectfully request withdrawal of this rejection.

Conclusion

Applicants submit that the subject application is in form for allowance, and respectfully requests that such action be taken. The Examiner is invited to telephone the undersigned at the telephone number indicated below if doing so would expedite prosecution. It is believed that no fee is due for submission of this response. Should any fees be required, please charge such fees to Kenyon & Kenyon, LLP Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

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